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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1983

NO. _____

PLAZA DE LAS ARMAS, INC., ET AL., Petitioners

v.

CITY OF SAN ANTONIO, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT from THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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v.
CITY OF SAN ANTONIO, ET AL.

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QUESTIONS PRESENTED

I. Does the refusal of the courts below to examine an alleged municipal policy of segregation and discrimination in its urban renewal land disposition program, and a systematic avoidance of, disregard for, and non-compliance with federal statutes and regulations prohibiting such discrimination, operate to frustrate the national policy of urban re-development and to further deplete the economic resources of our urban areas?

II. Did the Court of Appeals for the Fifth Circuit err in depriving petitioners of an opportunity to present at trial evidence of a type which this court has specifically approved as being probative of intent, despite the clear offer of petitioners of such evidence?

III. Did the Court of Appeals for the Fifth Circuit err in denying petitioners a trial on the merits, based on its conclusions that petitioners' claims of denial of procedural due process and inverse condemnation were not "serious"?

IV. Is evidence appearing of record that Defendants treated petitioner Viramontes differently than one or more Anglos in the same or similar situation sufficient in and of itself to raise the issue of the intent with which such treatment was accorded?

V. Assuming the issue of intent to be resolved in favor of petitioner Viramontes, does the doctrine of "transferred intent" then operate to create a cause of action in petitioner Rincon?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

NO. _____

PLAZA DE LAS ARMAS, INC., ET AL., Petitioners

v

CITY OF SAN ANTONIO, ET AL., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Plaza de las Armas, Inc., Louis Viramontes, and Joe Rincon, Petitioners herein, pray that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on May 18, 1983.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported and is printed in the Appendix at page "A". The judgment of the Court of Appeals for the Fifth Circuit appears at page "B". The judgment of the United States District Court for the Western District of Texas is unreported and appears at page "C".

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on May 18, 1983. A timely motion for rehearing was denied on the 24th day of June, 1983. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND ADMINISTRATIVE REGULATIONS INVOLVED

Statutes and administrative regulations involved include:

(1) 42 U.S.C. §1441 ("Congressional Declaration of National Housing Policy")
(2) 42 U.S.C. § 1455 ("Local Determinations")
(3) 42 U.S.C. § 1459 ("Protection of Labor Standards")
(4) 42 U.S.C. § 1983 ("Civil Rights Act of 1964")
(5) 42 U.S.C. § 2000d ("Nondiscrimination in Federally Assisted Programs")
(6) H.U.D. Regulations 1.1—1.12 ("Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development")
(7) H.U.D. Regulation 570.307(1)1 ("Certifications")

STATEMENT OF THE CASE

Petitioners, who are of Mexican-American national origin, sue for damages under 42 U.S.C. § 1983, 42 U.S.C. § 2000d, and directly under the 5th and 14th amendments to the United States Constitution.

Jurisdiction in the trial court was invoked under 28 U.S.C. § 1331 and § 1343.

They allege that in the urban renewal land disposition program of the City of San Antonio, which is funded by the federal government, prospective bidders of Mexican-American national origin are limited to bidding in certain segregated areas of the City, e.g., St. Paul's Square in the east for blacks and El Mercado in the west for Mexican-Americans; that even in those areas persons of Anglo descent are given preference; and that both the bidding process and the post-award process treat minority groups less favorably than Anglos. Petitioner Plaza de las Armas, Inc., a corporation of which Viramontes was president,

general manager, and fifty percent shareholder, is alleged to have been the first member of any ethnic minority ever to succeed in obtaining an award at public bidding against competition of urban renewal land outside the areas so segregated. That land was developed, with the aid of additional federal money from the Community Development Block Grant program and § 312 money from the Department of Housing and Urban Development, and leased back to the City of San Antonio as a municipal office building. Thereafter, in 1979, the interim lender foreclosed and sold the building under power of sale on the courthouse steps (although a permanent loan commitment was then in place and available to pay off the interim loan).

Specific acts of the City alleged to have proximately caused petitioners' inability to "close into" the permanent loan included (1) refusal to issue the certificate of occupancy required by the terms of petitioners' loan commitment, despite the fact that the City was then in full occupancy of the building, (2) demand for additional construction not due under either Code or contract, and (3) failure to pay rent due in the approximate sum of $200,000.00.

Petitioners further allege that their property was taken without compensation; that they have been denied procedural due process and the equal protection of the laws; and that the actions of defendants were "malicious, willful, intentional, and motivated by conscious animus toward persons of Mexican-American national origin as a class, and by a stereotyped perception of such persons as being poverty-stricken and lacking in business judgment".

During pre-trial no inquiry was made as to the manner in which the treatment accorded Viramontes compared with that accorded any other bidder; nor were petitioners' expert witnesses or statisticians deposed; nor any history of the city's policy of discrimination under the urban renewal program developed.

In one deposition, Viramontes, apparently angry, volunteered information about various acts of disparate treatment - on p. 4, that the City's lease did not conform to that offered Anglos; p. 8, discrepancies in Code enforcement of this building compared to other buildings, pp. 8 and 9, "certain segregated areas of the city"; p. 67, treatment afforded a competitive Anglo bidder named Bob Callaway; p. 70, extensions and changes in building plans; p. 71,"we were only ones whose extensions had to be approved by City Council" - they would "berate you"; p. 73, the San Antonio Development Agency attempted to have a part of his award deleted from his application for designation as a historic building (necessary to obtain his funding); p. 74, he had "performed quicker than anybody"; p. 75, the City had been "negative in cooperating with our efforts"; p. 95, City Hall did not have a copy of the regulations it was attempting to enforce.

Louis Fox, then assistant manager for the City, deposed briefly that he was not aware of any other instances in which the City had taken certain actions which it took in connection with these petitioners.

In making affidavits concerned largely with other matters, Viramontes referred briefly to his bidding history with the City and to actions which the City had taken in connection with his other bids, including taking one piece of property off the market entirely (which required, incidentally, a major amendment to the City's urban renewal plan) and the refusal of City Council to confirm another award which the Agency had made to him.

Certain tables of data were also included in the record reflecting the names and national origins of all bidders and purchasers in the particular urban renewal project in controversy; the price paid, amount of acreage, and classification as to geographic location of each particular parcel; the dates of bidding and competition encountered on each bid; and the terminations, transfers, and ultimate disposition of all bids.

At no point in the proceedings have defendants ever controverted that the events alleged did in fact take place substantially as alleged, or that the acts of defendants were in fact motivated by discrimination against Mexican-Americans as a class.

At hearing on defendants' "Supplemental Motion for Summary Judgment", which was based solely on the grounds that plaintiffs' cause of action was frivolous and insubstantial, and which, in petitioners' opinion, amounted to little more than a general demurrer, in an impromptu response to spontaneous inquiries from the court, and not to any issue raised by defendants, petitioners' counsel mentioned some sixteen acts or items of evidence expected to be adduced as evidence of discrimination upon trial on the merits. Those items are set forth in the Petition for Rehearing in the appellate court as follows:

"1. A bidding history of nine bids cast over a period of ten years;
2. A change in the proposed disposal of Community Development Block Grant funds;
3. A disproportionate ratio of 10% of the area of the Rosa Verde project awarded to Mexican-American bidders, although bids were cast in approximately equal proportions;
4. The failure of the City to establish impartial standards for disposition of Urban Renewal property, despite H.U.D.'s requirement that they do so;
5. The failure of the Agency to establish an affirmative action plan, though called upon by H.U.D. to do so;
6. A disproportionate ratio between both numbers of bids cast and price paid per square foot between Anglos and those Mexican-American bidders who were successful;
7. Numerous procedural deviations, including the failure of the City to require one Anglo bidder who opposed and outbid Plaintiff Viramontes on one bid to actually pay the amount which he had bid;

8. The City's failure to require the same bidder to perform his contract of redevlopment;
9. The City's failure to require a current bid bond from the same Anglo developer;
10. The City's insistence that Viramontes comply strictly with the terms of his contract;
11. Rosenberg's evidence about violations of the Texas "Open Meetings Law";
12. Specific language of one building inspector tending to prove motive and intent;
13. The demand for improvements not called for by Code."

And again,

"1. The fact that City Council had removed approximately one-third of the land designated for private development from bidding and retained it rather than dispose of it to Mexican-American bidders;
2. Further allegations of a history of deviations in policies and procedures over a period of years;
3. Statistics dealing with the total outcome of all the bidding;
4. The assistance of the City in helping its Anglo bidders secure private financing."

The following morning the court rendered summary judgment for defendants upon their "Supplemental Motion", although subpoenas had been issued and witnesses were standing in the lobby.

Upon appeal, the United States Court of Appeal for the Fifth Circuit unanimously affirmed the judgment in a per curiam opinion on the basis that there is no evidence of "discrimination."

Viramontes was associated with nine bids on urban renewal property. For eight of those bids his experiences were typical, customary, "systemic", and in no way out of the ordinary experience of the Mexican-American bidder.

He lost them all. It was only on the one bid which was awarded, and at that particular point in time when it began to appear that he might actually succeed in retaining the award, that his experiences ceased to be typical and became not only "episodic", but downright bizarre.

Petitioner Rincon was the plumber who worked on the building. Foreclosure sale cut off his mechanic's lien and deprived him of his Davis-Bacon benefits. He is, as were most of the other unpaid workmen on the building, of Mexican-American national origin.

The alleged scheme of geographic segregation continues to this day, as do the systematic procedures adopted by the City and designed to insure the elimination of the undesirable minority applicant. It is true that minority members of City Council have attempted, since the initiation of this lawsuit, to encourage minority investment, but to date such efforts have been largely unavailing, and deeply entrenched resistance to minority investors continues unabated.

At no time has any court ever cared to address the issues of ongoing discrimination and segregation.

REASONS FOR GRANTING WRIT

THE REFUSAL OF THE COURTS BELOW TO EXAMINE MUNICIPAL COMPLIANCE WITH CONGRESS' DIRECTIVES HAS OPERATED TO FRUSTRATE THE NATIONAL POLICY OF COMMUNITY REDEVELOPMENT.

The importance of this case lies not in the number of persons affected, which is small, but in the number of taxpayer dollars affected, which is large. The governmental spending policy sought to be reviewed involves many millions of dollars annually.[1]

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1 See, e.g., 42 U.S.C. § 1453, 1452(b), and 1452.

This case presents, as do few others, an opportunity to examine and quantify the actual out-of-pocket cost to the majoritarian taxpayer of a governmental policy of dismination.

Like slavery, the acts of defendants have been not only unjust, but also economically unproductive. By its refusal to subject the municipality to judicial scrutiny to determine whether or not it has spent federal monies in accord with the scheme promulgated by Congress, the Fifth Circuit has acted so as to frustrate a long-standing national policy involving the allocation of community development resources, and to direct the taxpayer dollar toward a use never envisioned or sanctioned by the House of Representatives.

Neither Texas nor its municipalities has an income tax, and the primary source of municipal revenue, other than federal monies, is the ad valorem tax. When a Mexican-American bidder is denied a parcel of real estate, it does not necessarily follow that an Anglo gets it. More commonly, nobody gets it, and the land is simply allowed to lie vacant, inhabited solely by Johnson grass and mosquitoes, or diverted to some form of governmental use.[1] Approximately one-third of the land in the particular project giving rise to this case was removed from the market. The project itself was "closed out" in 1979, many years overdue and far over budget, with land still not disposed of. No ad valorem taxes are paid on land awaiting disposition. It would be difficult to imagine a system more carefully designed to frustrate the underlying goals and aims of the Congressional spending program supposedly aimed at the economic rehabilitation of this country's "central cities".

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1 The local federal courthouse is erected on the edge of a tract of some 40 acres lying mostly vacant since 1968. A member of the local judiciary succeeded in obtaining the use of a portion of it for court and office purposes.

In a national climate of cost-consciousness, this case is uniquely suited for review at this time.

II.

THE COURT OF APPEALS FOR THE FIFTH CIRCUIT ERRED IN DEPRIVING PETITIONERS OF AN OPPORTUNITY TO PRESENT AT TRIAL EVIDENCE OF A TYPE WHICH THIS COURT HAS SPECIFICALLY APPROVED AS BEING PROBATIVE OF INTENT.

This court, in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 50 L.Ed. 2d 450, 97 S.Ct. 555 (1977) set forth some factors declared by the court to be probative of intent to discriminate, including, among others, the "impact of the official action", the "historical background", and "departures from the normal procedural sequence". The evidence sought to be introduced by petitioners falls squarely within those guidelines and is necessary in order to make out a clear and convincing case.

Evidence of procedural deviations very similar to those experienced by petitioners, as reflected in the record of this case, was set forth in *United States v. City of Parma*, 661 F. 2d 562 (6th Cir. 1981) and in *Facts Concerts, Inc. v. City of Newport*, 626 F. 2d 1060 (1st Cir. 1980), in both of which similar types of evidence were found highly persuasive by the respective courts.

In *City of Parma* the court said:

> "The deviations from customary practices . . . consisted of a requirement of unusually strict adherence to the provisions of the Parma Planning and Zoning Code and a departure from the City's normal practice of accommodation with developers through informal negotiations . . . The contrast between procedures followed in handling the application of Parmatown Woods and . . . two other multiple-family developments, was particularly striking," p. 575.

Further, "The he stated reason for the denial was the developer's failure lure to comply with Parma's land use ordinances. The co e court found that Parma had not required strict compliance w e with all its ordinances and procedures in at least four other ins instances involving apartment projects . . .". p. 567.

The same court urt also held admissible as evidence of intent "the failure of th f the city council to adopt a resolution welcoming all pers ersons of goodwill to Parma . . ." page 574.

Compare in the the instant case the proffered evidence of the failure of the San San Antonio City Council to adopt either impartial standard lards for the disposition of property or an affirmative action ion plan in connection with such disposition, though requested ed by H.U.D. to do both.

The trial courts rts in the *Facts Concerts* case simply found that the City's def defenses of non-compliance with municipal ordinances was "pr "pretextual".

The refusal of th f the Fifth Circuit to accept such evidence as being sufficient to t to raise the issue of intent and justify a trial on the merits is in s in clear conflict with those decisions, as well as with *Village of . of Arlington Heights.*

Additionally, ev, evidence of impact, barely suggested in the sworn testimony by but urged by counsel at hearing, is crucial to petitioner, for for there is nothing in the record to affirmatively indicate tha that those procedural deviations might not be accounted for by by mere personal animosity, or by some unaccountable ave aversion to the particular bidder.

Indeed, but did did any such aversion then extend to each and every other ler bidder of Mexican-American origin who sought land ou outside the "Mexican Market", and inexplicably disappear when the bidder was an Anglo?

Surely not *all all* bidders of Mexican-American national origin could have ave been personally obnoxious to the City?

Such an hypothesis appears improbable in the extreme, and, viewed across the broad range of experience of all bidders in the program, petitioner's claim that national origin is at the root of his troubles suddenly appears vastly more credible than it did when based solely upon the bare and sketchy outline of his own individual mishaps.

The court of appeals has also ignored numerous pronouncements of this court relating to appropriate procedures for summary judgment, including burden of proof, notice, opportunity to reply, and standard of review on appeal, as set forth in *Adickes v. Kress,* 398 U.S. 144, 90 S.Ct. 1598, 26 L.Ed. 2d 142, (1970) and more particularly in *Conley v. Gibson,* 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed. 2d 80 (1951), as well as Rules 8(a), 9(b), and 7(b) of the *Federal Rules of Civil Procedure.*

Additionally, the appellate court has disregarded the expressed attitude of this court that "questions of intent are notoriously inappropriate for summary judgment". *Poller v. Columbia Broadcasting System, Inc.,* 368 U.S. 464, 7 L.Ed. 458, 82 S.Ct. 486 (1962).

III.

THE COURT OF APPEALS FOR THE FIFTH CIRCUIT ERRED IN DENYING PETITIONERS A TRIAL ON THE ISSUES ON DENIAL OF PROCEDURAL DUE PROCESS AND INVERSE CONDEMNATION BASED ON THE COURT'S UNSUPPORTED CONCLUSIONS THAT SUCH CLAIMS WERE NOT "SERIOUS".

The Fifth Circuit further ignored standards set by this court in determining, upon what basis is not known to your petitioners, that petitioners' claims of procedural due process violations and inverse condemnation are not "serious". Petitioners hardly know what to say about such a conclusion, as the bulk of their allegations and depositions is directed toward proof of due process violations, and appear

well within prior cases considered by this court. (Nor is intent to discriminate on account of national origin, so far as is known to petitioners, an element of a claim of denial of due process or of inverse condemnation.) See, with respect to procedural due process, the *Slaughterhouse Cases,* 83 U.S. 36 (1873); *Carey v. Piphus,* 434 U.S. 247, 98 S.Ct. 1042, 55 L.Ed. 252 (1978); *Monroe v. Pape,* 365 U.S. 167, 5 L.Ed. 2d 492; 81 S. Ct. 473 (1961); and *Gibson v. Berryhill,* 411 U.S. 564, 36 L.Ed. 2d 488, 93 S.Ct. 1689 (1973); with regard to inverse condemnation, *United States v. Causby,* 328 U.S. 256, 90 L.Ed. 1206, 66 S.Ct. 1062 (1945) and *Monongahela Navigation Co. v United States,* 148 U.S. 312, 37 L.Ed. 463, 13 S.Ct. 622 (1893).

IV.

THE EVIDENCE APPEARING OF RECORD THAT DEFENDANTS TREATED PETITIONER VIRAMONTES DIFFERENTLY THAN ONE OR MORE ANGLOS IN THE SAME OR SIMILAR SITUATION IS SUFFICIENT TO RAISE THE ISSUE OF THE INTENT WITH WHICH SUCH TREATMENT WAS ACCORDED.

Numerous courts of appeal have ruled that evidence that a minority plaintiff is treated differently than one or more members of the majority class in the same or similar situation is sifficient to raise the issue of the intent with such treatment is afforded. The Supreme Court also has ruled upon the question, though perhaps less decisively, in the case of *Alamo Land & Title Co., Inc. v. Arizona,* 424 U.S. 295, S.Ct. 910, 47 L.Ed. 2d (1976).

The Second Circuit has ruled repeatedly, beginning as early as 1946 in *Burt v. City of New York,* 156 F. 2d 791, when Judge Learned Hand held, in regard to a plaintiff with very similar problems, that he stated a cause of action, and, though obviously entertaining a low opinion of the Civil Rights Acts, nevertheless proceeded to enforce them. See

also *Doe v. New York City Dept. of Social Services,* 649 F. 2d 134 (2d Cir. 1981); *Turpin v. Mailet,* 619 F. 2d 196 (2d Cir. 1980); and *Romero v. Union Pacific Railroad,* 615 F. 2d 1303 (10th Cir. 1980).

Evidence of this type is well-developed in the record of the instant case, and the holding of the Court of Appeals for the Fifth Circuit is in clear conflict with authority in other circuits.

V

THE DOCTRINE OF "TRANSFERRED INTENT" OPERATES TO CREATE A CAUSE OF ACTION IN PETITIONER RINCON.

No suggestion has ever been made that defendants held any particular animus toward petitioner Rincon, nor the other laborers and materialmen on the building. On the other hand, they have certainly displayed a conscious indifference as to whether or not he, and other workmen on the building, are ever paid their wages and other Davis-Bacon benefits.

Though the malice of the defendants was directed solely at the entrepreneurs attempting to accumulate capital, nevertheless, by attempting to drive Viramontes into bankruptcy, the effect of such actions spread throughout the community and resulted surely in a large number of workmen remaining unpaid. Nowhere is there a clearer example of the frustration of the economic regulations imposed by Congress than in this situation, for the Davis-Bacon laws, and similar provisions carried forward in 42 U.S.C. § 1459, have always been thought to be based entirely upon economic considerations, and to have nothing to do with civil rights.

These circumstances present an important issue of federal law which has not been, but should be, decided by this court, in that this court has never ruled upon the question of whether or not malicious intent in constitutional law may

be transferred, as in the well-established tort doctrine of "transferred intent", to create a cause of action in a person damaged by malicious actions directed at a person other than himself.

Petitioner Rincon is such a person, for he fell victim to animus clearly aimed at Viramontes.

CONCLUSION

Finally, petitioners say that the treatment accorded petitioner Viramontes raises very serious questions as to the manner in which our national programs for municipal revitalization are being implemented, and it is in the public interest that those questions receive the detailed examination which they merit.

Neither the urban renewal program nor the common-law practice of awarding public contracts at public bid was adopted for the peculiar benefit of petitioner, nor for that ethnic group to which petitioners belong, but solely in order that the general public might be benefited and safeguarded by the results supposed to stem from those policies. To allow them to be subverted by any ulterior motivation of local officials who may desire to favor any one class of bidders - in this instance, Anglos - over another class is to deny the public the benefits sought to be obtained from the prescribed bidding policy.

So simple a proposition hardly seems deserving of extensive argument.

The implementation of this nation's urban renewal legislation has been largely insulated from judicial review by *Davis v. City of Lubbock*, 326 S.W. 2d 699, and its progeny in other states. In addition, because of the numerous administrative devices available to a municipality seeking to

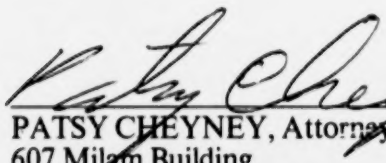
avoid compliance with federal policies, and the relatively few persons affected at the local level, municipal policies are difficult to challenge through the normal political processes. The "Housing Act of 1949", 42 U.S.C. § 1441 et. seq., which is the act under which this particular urban renewal project was originally funded, was amended in 1974 by Congress, which expressed its dissatisfaction with the lack of progress made under the prior housing legislation. The refusal of the lower courts to examine all aspects of the series of interrelated municipal actions exerted against petitioner Viramontes only makes it more difficult for Congress to measure the actual effects of its attempted remedial legislation.

In *Gomillion v. Lightfoot,* 364 U.S. 339, 81 S.Ct. 125 (1960), which was a political access case as this is an economic access case, the court said, speaking of the Fifteenth Amendment, that "it nullifies sophisticated as well as simple-minded modes of discrimination".

Petitioners suggest to this court that the time is ripe for a full-fledged examination of the "sophisticated modes of discrimination" presented in this case, and the issues current and timely in the present economy.

Petitioners respectfully request that this case be remanded on the merits.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Writ of Certiorari on behalf of petitioners Plaza de las Armas, Inc., Louis Viramontes, and Joe Rincon was served by hand-delivery to the office of Mr. Steven W. Arronge, Assistant City Attorney, 200 Main Plaza, Suite 101, San Antonio, Texas 78205, Attorney for Appellees, on the 7th day of September, A.D. 1983.

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-1309

PLAZA DE LAS ARMAS, INC.,
ET AL.,

Plaintiffs,

PLAZA DE LAS ARMAS, INC.,
LOUIS VIRAMONTES and
JOE RINCON,

Plaintiffs-Appellants,

versus

CITY OF SAN ANTONIO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

(May 18, 1983)

Before THORNBERRY, GEE and WILLIAMS,
Circuit Judges.

PER CURIAM:

The sole serious contention by the appellant on this appeal is that in the disaster of this business enterprise there was racial discrimination. A reading of the record shows that there is nothing in the record which could raise a serious factual issue concerning racial discrimination. The summary judgment for the appellees is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-1309

D.C. Docket Nos. SA-81-CA-467 & SA-80-CA-445

PLAZA DE LAS ARMAS, INC.,
ET AL.,

Plaintiffs,

PLAZA DE LAS ARMAS, INC.,
LOUIS VIRAMONTES and
JOE RINCON,

Plaintiffs-Appellants,

versus

CITY OF SAN ANTONIO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

Before THORNBERRY, GEE and WILLIAMS,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED. that plaintiffs-appellants pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

May 18, 1983

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-1309

PLAZA DE LAS ARMAS, INC., ET AL.,

Plaintiffs,

PLAZA DE LAS ARMAS, INC., LOUIS VIRAMONTES and JOE RINCON,

Plaintiffs-Appellants,

versus

CITY OF SAN ANTONIO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING

(May 18, 1983)

Before THORNBERRY, GEE and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.

ENTERED FOR THE COURT:

United States Circuit Judge

C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PLAZA DE LAS ARMAS, INC., et al.,	I	
Plaintiffs,	I	CIVIL ACTION NUMBERS:
vs.	I	SA-80-CA-445
	I	SA-81-CA-467
CITY OF SAN ANTONIO et al.,	I	
Defendants.	I	

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On this date came on to be considered the Motion for Summary Judgment of Defendants CITY OF SAN ANTONIO, LILA M. COCKRELL, FRANK D. WING, JOE ALDERETE, JR., HELEN DUTMER, HENRY CISNEROS, BERNARDO EURESTE, JOE WEBB, BOB THOMPSON, GENE CANAVAN, VAN HENRY ARCHER, JOHN STEEN and THOMAS E. HUEBNER. The Court after reviewing the motion, Plaintiff's response, the depositions and exhibits in this cause, finds that Defendants' Motion for Summary Judgment is meritorious and that same should be granted.

It is, therefore, ORDERED that Judgment be granted for Defendants and that Plaintiffs' Complaints in Civil Actions Nos. SA-80-CA-445 and SA-81-CA-467 be, and the same are hereby DISMISSED with prejudice with all costs taxed against Plaintiffs.

Signed and Entered this 11 day of May, 1982.

Fred Shannon, United States
District Judge

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

ARTICLE XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

The Congress declares that the general welfare and security of the Nation and the health and living standards of its people require housing production and related community development sufficient to remedy the serious housing shortage, the elimination of substandard and other inadequate housing through the clearance of slums and blighted areas, and the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation. The Congress further declares that such production is necessary to enable the housing industry to make its full contribution toward an economy of maximum employment, production, and purchasing power. The policy to be followed in attaining the national housing objective established shall be: (1) private enterprise shall be encouraged to serve as large a part of the total need as it can; (2) governmental assistance shall be utilized where feasible to enable private enterprise to serve more of the total need; (3) appropriate local public bodies shall be encouraged and assisted to undertake positive programs of encouraging and assisting the development of well-planned, integrated residential neighborhoods, the development and redevelopment of communities, and the production, at lower costs, of housing of sound standards of design, construction, livability, and size for adequate family life; (4) governmental assistance to eliminate substandard and other inadequate housing through the clearance of slums and blighted areas, to facilitate community development and redevelopment, and to provide adequate housing for urban and rural nonfarm families with incomes so low that they are not being decently housed in new or existing housing shall be extended to

those localities which estimate their own needs and demonstrate that these needs are not being met through reliance solely upon private enterprise, and without such aid; and (5) governmental assistance for decent, safe, and sanitary farm dwellings and related facilities shall be extended where the farm owner demonstrates that he lacks sufficient resources to provide such housing on his own account and is unable to secure necessary credit for such housing from other sources on terms and conditions which he could reasonably be expected to fulfill. The Department of Housing and Urban Development, and any other departments or agencies of the Federal Government having powers, functions, or duties with respect to housing, shall exercise their powers, functions, and duties under this or any other law, consistently with the national housing policy declared by this Act and in such manner as will facilitate sustained progress in attaining the national housing objective hereby established, and in such manner as will encourage and assist (1) the production of housing of sound standards of design, construction, livability, and size for adequate family life; (2) the reduction of the costs of housing without sacrifice of such sound standards; (3) the use of new designs, materials, techniques, and methods in residential construction, the use of standardized dimensions and methods of assembly of homebuilding materials and equipment, and the increase of efficiency in residential construction and maintenance; (4) the development of well-planned, integrated, residential neighborhoods and the development and redevelopment of communities; and (5) the stabilization of the housing industry at a high annual volume of residential construction. July 15, 1949, c. 338, § 2, 63 Stat. 413; May 25, 1967, Pub.L. 90-19, § 6(a), 81 Stat. 21.

§ 1455. Local determinations

Contracts for loans or capital grants shall be made only with a duly authorized local public agency and shall require that—

(a) Approval of urban renewal plan. The urban renewal plan for the urban renewal area be approved by the governing body of the locality in which the project is situated, and that such approval include findings by the governing body that (i) the financial aid to be provided in the contract is necessary to enable the project to be undertaken in accordance with the urban renewal plan; (ii) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the locality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise; (iii) the urban renewal plan conforms to a general plan for the development of the locality as a whole; and (iv) the urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities, as may be desirable for neighborhood improvement, with special consideration for the health, safety, and welfare of children residing in the general vicinity of the site covered by the plan;

(b) Obligations of purchasers or lessees and their assignees. When real property acquired or held by the local public agency in connection with the project is sold or leased, the purchasers or lessees and their assignees shall be obligated (i) to devote such property to the uses specified in the urban renewal plan for the project area; (ii) to begin within a reasonable time any improvements on such property required by the urban renewal plan; and (iii) to comply with such other conditions as the Secretary finds, prior to the execution of the contract for loan or capital grant pursuant to this title.

§ 1459. Protection of labor standards

In order to protect labor standards—

(a) any contract for loan or capital grant pursuant to this title [42 USCS §§ 1450, 1451, 1452, 1453-1455, 1456-1460, 1462, 1463, 1466-1469c] shall contain a provision requiring that not less than the salaries prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by the Secretary, shall be paid to all architects, technical engineers, draftsmen, and technicians employed in the development of the project involved and shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (49 Stat. 1011) [40 USCS §§ 276a-276a-5], shall be paid to all laborers and mechanics, except such laborers or mechanics who are employees of municipalities or other local public bodies, employed in the development of the project involved for work financed in whole or in part with funds made available pursuant to this title [42 USCS §§ 1450, 1451, 1452, 1453-1455, 1456-1460, 1462, 1463, 1466-1469c]; and the Secretary shall require certification as to compliance with the provisions of this paragraph prior to making any payment under such contract; and

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress.

(R. S. § 1979.)

§ 2000d. Nondiscrimination in federally assisted programs

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(July 2, 1964, P. L. 88-352, Title VI, § 601, 78 Stat. 252.)

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

1.1 Purpose.
1.2 Definitions.
1.3 Application of Part 1.
1.4 Discrimination prohibited.
1.5 Assurances required.
1.6 Compliance information.
1.7 Conduct of investigations.
1.8 Procedure for effecting compliance.
1.9 Hearings.
1.10 Decisions and notices.
1.11 Judicial review.
1.12 Effect on other regulations; forms and instructions.

Appendix A

Authority: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d-1; sec. 7(d), 79 Stat. 670, 42 U.S.C. 3535(d); and the laws listed in Appendix A to this Part 1.

Source 38 FR 17949, July 5, 1973, unless otherwise noted.

§ 1.1 Purpose.

The purpose of this Part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financing assistance from the Department of Housing and Urban Development.

§ 1.2 Definitions.

As used in this Part 1—

(a) The term "Department" means the Department of Housing and Urban Development.

(b) The term "Secretary" means the Secretary of Housing and Urban Development.

(c) The term "responsible Department official" means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this Part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

(d) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(e) The term "Federal financial assistance" includes: (1) Grants, loans, and advances of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term "Federal financial assistance" does not include a contract of insurance or guaranty.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended directly or through another recipient, for any program or activity, or who otherwise participates in carrying out

such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(g) The term "applicant" means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, contract, request, or plan.

§ 1.3 Application of Part 1.

This Part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department, including any program or activity assisted under the statutes listed in Appendix A of this Part 1. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This Part 1 does not apply to: (a) Any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in ‡ 1.4(c). The fact that certain financial assistance is not listed in Appendix A shall not mean, if title VI of the Act is otherwise applicable, that such financial assistance is not covered. Other financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice published in the Federal Register.

§ 1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this Part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this Part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any manner related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfied any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity.

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) (i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, faciities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effects of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the programs or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 et seq.), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this Part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this Part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part 1 applies, on the ground of race, color, or national origin, or with the purpose or effect of defeating or substantially impairing the accomplishments of the objectives of the Act or this Part 1.

(4) As used in this Part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this Part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this Part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to Part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this Part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this Part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this Part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

§ 1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other

benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance

in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Preexisting contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965: (1) Submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1 and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's

practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunities to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the application establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) *Elementary and secondary schools.* The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this Part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

§ 1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject tothis Part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this Part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this Part 1.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has compiled or is complying with this Part 1. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

§ 570.307 Certifications.

The applicant shall submit certifications each year providing assurances that:

(a) It possesses legal authority to apply for the grant, and to execute the proposed program.

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(c) It has compiled with all the requirements of OMB Circular No. A-95 as modified by this Part and that either:

(1) Any comments and recommendations made by or through clearinghouses are attached and have been considered prior to submission of the application; or

(2) The required procedures have been followed and no comments or recommendations have been received.

(d) Prior to submission of its application, the applicant has:

(1) Prepared a written citizen participation plan, which:

(i) Provides an opportunity for citizens to participate in the development of the application, encourages the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens of low- and moderate-income, provides for timely responses to the proposals submitted, and schedules hearing at times and locations which permit broad participation;

(ii) Provides citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(iii) Provides for public hearings to obtain the view of

citizens on community development and housing needs; and

(iv) Provides citizens with an opportunity to submit comments concerning the community development performance of the applicant;

(2) Followed this plan in a manner to achieve full participation of citizens in development of the application. The applicant shall also follow this plan to achieve full citizen participation in all other stages of the program.

Note—The above certification on citizen participation is effective August 1, 1978. For applications submitted to HUD prior to August 1, 1978, the certification requirements of § 570.303(e)(4) published in the Federal Register (41 FR 4135) on January 28, 1976, shall apply.

(e) Its chief executive officer or other officer of applicant approved by HUD:

(1) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to this Part.

(2) Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(f) The Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight.

[The requirement for this certification will not preclude the Secretary from approving an application where the applicant certifies and the Secretary determines, that all or part of the Community Development Program activities are designed to meet other community development needs having a particular urgency as specifically explained in the application in accordance with § 570.302(f).]

(g) It will comply with the regulations, policies, guidelines and requirements of OMB Circular No. A-102, Revised, and Federal Management Circular 74-4 as they

relate to the application, acceptance, and use of Federal funds under this Part.

(h) It will administer and enforce the labor standards requirements set forth in § 570.605 and HUD regulations issued to implement such requirements.

(i) It will comply with all requirements imposed by HUD concerning special requirements of law, program requirements, and other administrative requirements, approved in accordance with OMB Circular No. A-102 Revised.

(j) It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards and Executive Order 11288 relating to the prevention, control, and abatement of water pollution.

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117.1-R 1971, subject to the exceptions contained in 41 CFR 101-19.604. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(l) It will comply with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits or, be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. **If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant.** This assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, **for the period during which the real property or structure**

is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

(3) Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Part.

(4) Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

(5) Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60), and Section 4(b) of the Grant Agreement, which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. Contractors and subcontractors on Federal and federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

(m) It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with

the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

(n) It will:

(1) To the greatest extent practicable under State law, comply with Sections 301 and 302 of Title VI (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will comply with Section 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42, and

(2) Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(b):

(o) It will:

(l) Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and HUD implementing regulations at 24 CFR Part 42 and § 570.602(a);

(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displace as a result of acquisition of real property for an activity assisted under the Community Development Block Grant Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in different or separate treatment of such persons on account of race, color, religion, national origin, sex, or source of income.

(3) Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, or source of income and

(4) Inform affected persons of the relocation assistance, policies and procedures set forth in the regula-

tions at 24 CFR Part 42 and §570.602(a).

(p) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(q) It will comply with the provisions of the Hatch Act which limits the poliitcal activity of employees.

(r) It will give HUD and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the grant.

(s) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(t) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L, 93-234, 87 Stat. 975, approved December 31, 1973. Section 103(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financing assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financing assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant or any other form of direct or indirect Federal assistance.

(u) It will, in connection with its performance of environmental assessments under the National Environment Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470),

Executive Order 11593, and the Preservation of Archeological and Historical Data Act of 1966 (18 U.S.C. 469a et seq.) by (a) consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (See 36 CFR Part 800.8) by the proposed activity, and (b) complying with all requirements established by HUD to avoid or mitigate adverse effects upon such properties.

Certificate of Occupancy

Sec. 307.(a) Use or Occupancy. No building or structure of Group A, E, I, H, B or R, Division 1 Occupancy, shall be used or occupied, and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the building official has issued a Certificate of Occupancy therefor as provided herein.

(b) Change in Use. Changes in the character or use of a building shall not be made except as specified in Section 502 of this code.

(c) Certificate Issued. After final inspection when it is found that the building or structure compiles with the provisions of this code and other laws which are enforced by the code enforcement agency, the building official shall issue a Certificate shall contain the following:

1. The building permit number.
2. The address of the building.
3. The name and address of the owner.
4. A description of that portion of the building for which the certificate is issued.
5. A statement that the described portion of the building complies with the requirements of the code for the group and division of occupancy and the use for which its proposed occupancy is classified.
6. The name of the building official.

(d) Temporary Certificate. If the building official finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, he may issue a temporary Certificate of Occupancy for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure.